

LECTURE DELIVERED IN TORONTO
AT OSGOODE HALL
AT THE CONVOCATION MEETING
ON THURSDAY, THE 28TH OF JUNE, 1956.

Robert Gaschman

I thank you most cordially, Mr. Treasurer, for your very kind words of introduction. You have been indeed too generous. I see that Osgoode Hall has a very effective organization, for they have chosen one of their most persuasive lawyers to introduce me to this distinguished gathering. But I feel that your remarks are not only addressed to me, but to the Court, where I have the honour of sitting, and where I have the great intellectual pleasure of listening to you - but sometimes, unfortunately, I have to decide against you. You know, Mr. Treasurer, it happens quite often that the most clever lawyers are retained at the last moment, when the case is hopeless. That is why they cannot always be the winners.

Mesdemoiselles, Ladies and Gentlemen,

I would not speak all the truth if I did not tell you at the outset, Mr. Treasurer, all the pleasure I have to be here today, and how much, at your invitation, my natural modesty has been transformed into a very legitimate pride. I am indeed very much impressed by this highly representative gathering. Judges, you know, lose the habit of public speaking. They are appointed to listen to arguments and write judgments. But today, I have to fulfil a different role before this numerous audience; however, I find comfort in what told me one of my staunch supporters in the constituency of Bellechasse, where I ran as a member, many years ago, and to whom I had expressed my fear of having "stage fright". "Have no fear" were his wise words of encouragement, "for when you start

speaking, many will leave the hall".

This is not an invitation for you - (I have good news for you) as I have been asked to deliver "a short speech". I will faithfully follow this judicious advice.

I would like first of all, to congratulate very warmly all those who, to-night, will receive their degree, and who will become members of the large legal family. I received mine thirty-six years ago. You see, I am not shy about telling my age. I will soon be sixty years "young". It is better than to be forty years "old". It was one of the happiest days of my life, and I am sure that you have the same feeling in your hearts. This is indeed a great day for you all; a great day of satisfaction, of rejoicing and of pride.

You will today leave Osgoode Hall, this universally known place of learning,

from where have sprung so many students who have become and are actually the legal lights of our country. To-night, when you leave this place, do not forget it. Always keep in mind that Osgoode Hall, like a university, must not be considered as a mere stone building, where you have spent a few years of your life, studying law, to receive afterwards a degree as your reward. If you ever had such a thought, it would reveal a very narrow conception of the value of the teaching that was given to you. I know that you have higher ideals, and that you have engraved in your hearts the very deep feeling that the memories you will keep of this house, where you have received the knowledge that you have, will live beyond the days you have spent here. The students who leave a law school must not believe that they are pupils who merely part with teachers, but

they must have the belief that they are disciples who part with masters. You must, being the elite that sprung from Osgoode Hall, remember and diffuse the knowledge and culture which you have received here. I am quite sure you will do so.

To-night, mesdemoiselles and gentlemen, your responsibilities will start. Never forget that when some want to talk to the Almighty, they do so through the intercession of Saints; this is why the litigants wish to speak to judges through the voices of lawyers.

Society has enacted laws to protect the individual in civil and criminal matters. The layman has only a very limited idea of the subtilities, often found in the civil or common law. It will now be your mission, and a very sacred and high one, to assert the rights of your fellow-men. Always be loyal to

your clients, whether there is a large remuneration, or none whatever. For a client, there is never a small case. A one hundred dollar litigation is very often more important to a widow, than a million dollar suit is to a rich corporation.

Once, I said to the students at Laval University, in Quebec, where I taught law for 12 years: "You have finished your studies; you will now start to learn something". The Dean did not like it! But, nevertheless, I think I was right, for you will step now into the practical world. You will be confronted with the problems of life: widows, orphans, criminals, will come to you for advice. Be for them a kindly adviser in order to relieve their pains. They deserve it; very often, some are "les misérables" of mankind.

Do not ~~be~~ lawyers in a "hurry" !

try + become

Let your hearts and your minds work together; of course leaving the top place to the supremacy of law. But always keep fresh in your young memories, that the human mind, like timber, has to be well seasoned before it is most effectively used. You alone are the moulders of your future.

Law is not, as so many think, the result of the whim of legislators, or of the fancy of a judge who writes an opinion. A code, like rules of law, is not made at random. It is as difficult to change the law of a country, as it is to change its language, religion, literature or arts, because it is the true expression of the customs of its inhabitants, as well as the disclosure or the revelation of its ways of living and of its mentality. It is an impossibility to appreciate and judge the laws of other countries, and the reason of their existence, unless you are

familiar with the customs of its people. During the great days of the Roman Empire, certain laws existed which cannot be appreciated today, unless we have a knowledge for instance, of the organization of the Roman family. It has been the great and immortal work of a French Jurist, Pothier, who prepared and opened in France the road to codification, to eliminate from the Roman Law, which is now the foundation of ours, all that was appropriate only to Roman customs and to apply its basic principles and harmonize them with the ways of French living and thinking. Law tells us more of the mentality of a country than all the books of historians.

In our country, we have two great systems of law. In Quebec, we have the French civil law. You have the English common law.

It is indeed a great source of intellectual satisfaction to know and to have this unique advantage to appreciate these two legal ways of thinking. You have nothing to lose, and we have much to gain in acquiring a fair knowledge of both. It is not of course an absolute necessity, but it surely gives, I think, an intellectual legal gymnastic, and a better understanding of the different people who live in this country. At the University of Ottawa, where I teach civil law, and where, under a special legislation, the degrees that we give are recognized by the Quebec Bar, we will very shortly teach common law. It is our firm conviction that our pupils will draw from these lectures, a very substantial benefit, and learn the ways of thinking of their English speaking compatriots.

When you reach the Bench, you change many of your preconceived ideas. The Bench has been compared to Heaven. "Everybody wants to go; but not today". A judge must not be enslaved by his former ways of thinking. On the Bench, he has a complete view of the panorama of the whole legal battlefield, from a central point. He is not like a soldier who sees only his immediate opponent. This is why Mr. Justice Mignault, of the Supreme Court of Canada, to whom one of his articles on Constitutional Law, was cited by a lawyer, could say: "Sir, today, I have changed my mind".

It happened to me also. At Laval University in Quebec, my teaching has been that Habeas Corpus was always a civil writ. In 1945 in the Storgoff case, I wrote a judgment that it was not. A more recent example will

demonstrate to you how an antipathy may rapidly disappear and how may vanish a feeling that one may have previously entertained. My new brother on the Bench, Mr. Justice Abbott, was as you know Minister of Finance for eight years, and during his reign he levied very heavy taxation. He now favours, believe it or not, a substantial reduction in income taxes, and a reasonable increase of judges' salaries. We verily can say with the Roman poet: "otra tempora, otra mores".

Be always proud of our country and of your profession. Ours is undoubtedly the country of the future. Law has played a great part in its organization, its remarkable stability and its tremendous development. We were indeed very fortunate to have three great sources of law. Originally, this country

was under French domination and we, therefore, were ruled by French laws. They indeed were considered adequate and just, for the Imperial Government recognized them in 1775, by the Quebec Act, as being the civil laws of Lower Canada, and which are still in existence. Then came the English domination, which in certain spheres introduced some different systems of law. We are neighbours of the United States, and we have common ideas as to commercial and municipal laws.

The pride that we have in Quebec mixes with another feeling of very high satisfaction. We have not only French laws, which reveal the clarity of the French genius, but we have also British laws, in which we can see that devotion to liberty that has always been the attribute of British people. We have

also in some of our legislation a definite trend toward the American way of thinking.

If the law, mesdemoiselles and gentlemen, reveals as I believe, what a people is, then we surely like clarity, we like liberty, and sound financial and municipal institutions, and we must indeed be, as we are, devoted to democracy, for we have been inspired by the combined laws of the three greatest democracies the world has ever known: England, France and the United States.

To you all, fortunate new members of the Bar, I wish the very, very best.